IN THE HIGH COURT FOR JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

SMT.BISMILLAH V/S RSEB & ORS

S.B.CIVIL WRIT PETITION NO.905/1993
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Date of Judgment : 3rd July, 2006

PRESENT
HON'BLE SHRI N.P.GUPTA, J.

Mr. RK SONI, for the petitioner
Mr. RAVI BHANSALI, for the respondent
Mr. BL BHATI, ADDL. GOVT. ADVOCATE.

BY THE COURT:

The petitioner by this writ, claims a direction to the respondents, to grant pension to the husband of the petitioner, from the date of his retirement, and to pay all arrears thereof, and has claimed family pension, from the date of death of her husband, in the alternative, has claimed the grant of ex-gratia payment, as per the judgment of this Court, in 1992(1) WLN 166.

The case of the petitioner is; that her husband, deceased Farid Khan, entered into service of Electricity Department of erstwhile Jodhpur State on 17.10.1946, and was absorbed in regular services of RSEB, consequent upon integration of the State, and retired from RSEB as Fireman,

on 14.11.1973. He was said to be holding CPF/Account No.W/630, and that, no payment of CPF was made during his lifetime, who expired on 13.10.1979, and payment was made to the petitioner on 13.2.91. It is then alleged, that after retirement, and before death of the petitioner's husband, Finance Department issued Memorandum dt. 31.1.1977, granting pension, and family pension, to the Work Charged C.P.F. Account Holders, and asking them to opt for the same, and that the petitioner's husband duly opted for the same on 30.4.1977. Copy of the option has been filed as Annexure-1. It is then alleged, that thereafter the State Government also issued Memorandum dt. 17.10.1987, asking the C.P.F. Account Holders to opt for the pension. It is then alleged, that in the judgment of this Court, in R.S.E.B. Retired Employees' Association Vs. R.S.E.B. & Ors., reported in 1992 WLN-166, it has been held that the same treatment should be given to employees absorbed by the Electricity Board, otherwise it will be violation of Article 14, and the petitioner has claimed this judgment to be applicable on her on all fours. It is then alleged, that unfortunately, as the petitioner's husband was not alive on 17.10.1987, the date of notification, in view of the judgment in R.S.E.B. Retired Employees Association's case, which was rendered following the judgment of Hon'ble the Supreme Court, in State of Rajasthan Vs. Rajasthan Pensioners Samaj, reported in 1991 Lab. I.C.-1651 =AIR 1991 SC-1743, the widows of such C.P.F. Account holders, who had

expired before 17.10.1987, instead of family pension will be entitled to get Ex-gratia payment of Rs. 150/- per month, instead of family pension, in addition to admissible dearness allowance. It is with these averments, that the above reliefs have been claimed.

Reply has been filed on behalf of the respondents no. 1 and 3, being the Electricity Board on 6.8.1993, wherein it was denied that the petitioner's husband opted for pension, rather all amount of C.P.F. was paid to the petitioner, which would have been refused by the petitioner, had the deceased opted for pension. It was also contended, that the judgment in 1992 WLN-166 does not help the petitioner, as the petitioner had settled all C.P.F. amount, and there was no scheme of pension benefits for the employees of the Board, at that time. Regarding the judgment of Hon'ble the Supreme Court also, it was submitted that the petitioner is not entitled to any advantage on that basis.

Then, a rejoinder was filed by the petitioner; submitting rejoinder to the above reply, it has been contended, that since the deceased was neither paid pension nor provident fund, during life time, the petitioner, in order to survive, had to accept the P.F., but then, this fact cannot falsify the document of option Annexure-1, which bears the signature of the then employee of the

R.S.E.B. as having received the same, and for this reason nothing has been said in this reply, in that regard. Thus, the same should be treated to have been admitted by the respondents. It was pleaded that Annexure-1 was submitted in pursuance of the Notification/Memorandum dated 31.1.1977, and that the State of Rajasthan by another memorandum of even number dated 10.3.1977, added para-9 to the Memorandum dt. 31.1.1977. According to which, the work charged employees, who were absorbed on regular posts, but died before exercising option for pension, under these orders, shall be deemed to have opted for pension under this order, unless the members of family of such deceased, specifically make a request, that they may be paid Contributory Provident Fund benefit. It was also directed, that the Head of Office should, before preparation of pension papers, invariably ascertain from the members of the family of the deceased, entitled to receive the retirement benefits, whether he/she would like to receive Contributory Provident Fund benefits or not. By reproducing the above memorandum dt. 10.3.1977, it is contended, that the petitioner cannot be denied benefit of option, already exercised by her husband. Then, giving rejoinder to para-4 of the reply, it was pleaded, that the petitioner's husband was employee of erstwhile Jodhpur State's Electrical and Mechanical Department, which merged into the Electrical and Mechanical Department of the State, and thus, the deceased was the employee of State of Rajasthan, as held in the

judgment of this Court, in RSEB Retired Employees Association Vs. RSEB reported in 1992(1) WLN-166, which is fully applicable to the petitioner.

Later on a reply has been filed on behalf of the respondent no. 5, the Pension Department also, wherein issuance of memorandum dt. 31.1.1977 was not disputed, and replying para-5, it was pleaded that the petitioner has been sanctioned grant of ex-gratia payment in accordance with the judgment of Hon'ble the Supreme Court, in Rajasthan Pensioners' Samaj's case.

Yet another reply has been filed on behalf of the respondent no.4, again, being the successor company of the Electricity Board, pleading inter alia, that at the time of death of Farid Khan, pension scheme was not in existence in Electricity Board, and only C.P.F. scheme was there, whereunder deductions were made, and amounts have been paid to the petitioner. Regarding option for pension, it was pleaded, that in 1977, since the petitioner's husband was member of Electricity Board, the above option given by the Finance Department, was neither applicable on the employees of the Board, nor could it have been exercised by them, and that, the fact remains, that no option, if at all has been submitted by late Shri Farid Khan, was accepted by the competent authority, and the petitioner's husband continued to be C.P.F. subscriber. Then, it was pleaded, that as per

the memorandum dt. 17.10.1987, petitioner has been sanctioned ex-gratia benefit, along with admissible dearness allowance. It was pleaded, that since on 17.10.1987, the petitioner's husband was not alive, when the option for pension was given by the State Government to the ex-employees of the Jodhpur State C.P.F. Holders, the petitioner cannot claim benefit of pension.

Arguing the writ petition, submissions were made by the learned counsel for the petitioner, far beyond the pleading in the writ petition. A confusion was sought to be created, in the manner, that by virtue of memorandum dt. 31.1.1977, the petitioner's husband (an employee of the Electricity Board) was also entitled to pension, and then, referring to judgment of this Court, in Chiranjilal Avasthi Vs. State, reported in WLR 1994 Raj.-745, it was contended, that even if the option was not in prescribed form, it was curable irregularity. Then, the judgment of this Court, in Smt. Chhoti Devi Vs. State of Rajasthan, reported in 2005 (3) CDR 1838(Raj.) was cited wherein it was held, that even if the option was not accepted, having been submitted by the deceased, which was submitted on 10.11.1987, the petitioner therein was held entitled to pension, finding, that it is irrelevant, as to whether the same had been accepted by the concerned authority in time, or not. Then, on the basis of judgment of this Court, in Retired Contributory Provident Fund Holders Association Vs. State

of Rajasthan, reported in 1986 RLW-42, as affirmed by the D.B., in the State of Rajasthan Vs. R.C.P. Fund Holders Association, reported in 1987(1) RLR-353, it was contended that since the various cut off dates had been struck down, and since the petitioner's services were absorbed in the Board, w.e.f. 25.10.1972, till then, he was deemed to be employee of the State Government, and therefore, he is entitled to the benefit of Memorandum dt. 31.1.1977.

On the other hand, learned counsel for the respondent, Mr. Bhansali submitted, that the petitioner is not clear, as to whether she wants to claim pension of her husband as an employee of the State, or as an employee of the Board. It was also contended, that the Memorandum dt. 31.1.1977 is issued by the State Government, and not by the Electricity Board, and since there is nothing in terms of the Memorandum dt. 31.1.1977, that it would cover the employees of the Electricity Board also, thereunder the petitioner is not entitled to any benefit of pension. The other submission made was, that in any case, the memorandum dt. 31.1.1977 shows, that it applies to only work charged employees of the State Government, while the petitioner was a regular employee of the Electricity Board, and therefore, he cannot be said to be entitled to claim benefit, as work charged employee. Then, relying upon the judgment of Hon'ble the Supreme Court, in Krishena Kumar Vs. Union of India, reported in AIR 1990 SC-1782, it was contended, that

since the petitioner had retired as a C.P.F. subscriber, and since after his retirement, till his death, the benefit of pension, was not given by the Board, entitling the retired employees to opt to switch over to pension, the petitioner cannot claim any benefit of pension. Regarding Annexure-1, it was submitted, that there is nothing to show, that it was ever submitted with the authorities, apart from the fact, that even if it was submitted, that is of no consequence, as it was neither contemplated, nor permissible, nor was it ever accepted, and in accordance with the memorandum dt. 17.10.1987, the petitioner is being paid the ex-gratia payment, as directed by Hon'ble the Supreme Court, in Rajasthan Pensioners' Samaj's Case. Thus, taken from any stand point, the petitioner is not entitled to any reliefs in the writ petition. However, it was submitted, that the ex-gratia payment, sanctioned to the petitioner, in accordance with the memorandum dt. 17.10.1987, shall be continued to be paid.

I have considered the submissions, and have gone through the pleadings, the two memorandums, and various judgments, cited at the bar.

Before proceeding further I may gainfully reproduce the memorandums dt. 31.1.1977 and 17.10.1987 which read as under:-

"FINANCE (Gr.2) DEPARTMENT

MEMORANDUM

Jaipur, January 31, 1977.

Sub:- Counting of work-charged service for pension on absorption/appointment of work-charged employees on regular post under Government.

G.S.R.112.- Under the existing provisions contained in the Rajasthan Service Rules the service rendered by a Government servant as work-charged employee before his appointment to a regular post does not count as qualifying service for pension.

2. Certain work-charged employees in Public Works Department (including Gardens), Public Health Engineering and Irrigation Department etc. are absorbed/appointed to regular posts/under Government in accordance with the orders issued by the Administrative Department of Government from time to time. The question regarding grant of pensionary benefits and counting of service rendered by such Government servants as work-charged employee prior to appointment to regular post for the purpose of pension under Rajasthan Service Rules has been under consideration of the Government.

3. The Governor is now pleased to order that the work-charged employees who are absorbed/appointed to regular post by conversion of work charges post into regular post under Government from time to time may be allowed to exercise option to elect either to continue to contribute towards Contributory Provident Fund or to opt for pensionary benefits under Rajasthan Service Rules. On their electing to opt for pension rules the period of service rendered by them as work-charged employees before appointment/absorption on regular post shall qualify for pension for the period during which they subscribed to the Contributory Provident Fund, irrespective of their date of absorption in Government service subject to the conditions laid down in para 4 below.

4. In the case of a Government servant who opts for pension under the Rajasthan Service Rules the following procedure shall be followed;-

(i) The amount of subscriptions together with interest thereon standing to the credit of such Government servant in his Contributory Provident Fund on the date of option shall be transferred to his credit in the General Provident Fund.

(ii) The amount of contribution by the State Government

together with interest thereon standing to his credit in the fund on the above date shall be credited to the General Revenues.

(iii) The employee shall, in exchange, be entitled to count towards pension the service rendered by him as a work-charged employee prior to such date, as if such service has been rendered in a pensionable establishment under the Government provided that the benefit of pensionable service shall accrue only in respect of the period or periods of service rendered as a work-charged employee during which he subscribed to the Contributory Provident Fund.

5. The option has to be exercised in writing within a period of three months from the date of publication of these orders in the official gazette in the form appended to this Memorandum. Option once exercised shall be final. Those who do not exercise option within the aforesaid time limit shall be deemed to have retained the Contributory Provident Fund benefits. It should be noted that it is not sufficient for a Government servant to exercise option within the specified time but also to ensure that it reaches the prescribed authority within the time and that he obtains acknowledgement thereof. The option given by the Government servant may be pasted in the service book and a true copy of it be placed in his personal file. The option shall be communicated to the Head of Office. The option when received from a Government servant shall be countersigned by the authority which receives it.

6. Government servants, who have retired between the date of absorption/appointment and the issue of these orders and received their retirement benefits as admissible under the Contributory Provident Fund Rules, shall also be entitled to exercise option for pension and their retirement benefits already paid to them shall be adjusted against the Death-cum-Retirement Gratuity and pension admissible under the Rajasthan Service Rules; and they shall not be asked to refund the retirement benefits already received by them alongwith interest thereon for the intervening period i.e. for the period from the date of receipt of retirement benefits under Contributory Provident Fund Scheme and issue of pension under this order.

7. In the case of Government servants who were required to contribute under contributory Provident Fund Rules as applicable to them prior to their absorption but who did not contribute during any period or spell after coming into force of the respective relevant Work-Charged Employees Contributory Provident Fund Rules for one reason or another, they may be allowed to contribute for that period so that any intervening period may also be counted for pension.

8. Government servants who have already exercised option in accordance with the orders issued by the Administrative Department from time to time to retain Contributory Provident Fund as their retirement benefits shall also be entitled to exercise fresh option under these orders in the form appended to this Memorandum.

FORM OF OPTION

In pursuance of Finance Department Memorandum No.F.1 (26) FD (Gr.2)/74, dated 31-1-1977 I ---------- son of Shri ---------- designation ----------and who is subscriber to the Contributory Provident Fund Account No.---------- under Work Charged Employees Contributory Provident Fund Scheme hereby opt for the pension rules contained in the Rajasthan Service Rules, including the New Family Pension Rules, as amended from time to time in lieu of the Work-Charged Employees Contributory Provident Fund benefits as now admissible.

Witness: Singnature of Government Servant.
Signature
Date Date
Name in Full Name in Full
(in Block letters) (in Block letters)
Designation Designation.
Office Office

Countersigned
Signature with date
(Head of office)

Received the above declaration
Station Signature
Date (Head of office)

[No.F.1(26)FD (Gr.2)/74]
By Order of the Governor,

M.S.Sadashivan,
Financial Commissioner &
Secretary to Government.”

“GOVERNMENT OF RAJASTHAN
Finance (Gr.2) Department

MEMORANDUM

No.F.1(35) FD (Gr.2)/87 Jaipur, dt.17.10.1987.

Sub : Grant of Option to the ex-employees who retired availing themselves of retirement benefits available under the Jodhpur Contributory Provident Fund Rules to come over to pensionery benefits under the Rajasthan-Service Rules, 1951.

The under-signed is directed to say that consequent upon the Judgment of the Rajasthan High Court, the matter has been considered and the Governor is pleased to decide that the ex-employees of the Rajasthan State who retired after 1.4.1951 (the date on which the Rajasthan Service Rules 1951 came in to force) from a post under the Govt. availing themselves of retirement benefits available under the Jodhpur Contributory Provident Fund Rules and who had not opted for pension rules on affording chances from time to time after 1.4.1951 to opt for pension rules may be allowed an opportunity to exercise option for pension rules as existing in the Rajasthan Service Rules, 1951 on the date of their respective retirement.

2. The option has to be exercised in writing within a period of three months from the date of publication of this memorandum in the Rajasthan Rajpatra in the form appended to this memorandum. Option once exercised shall be final. Those who do not exercise option within the aforesaid time limit shall be deemed to have retained Contributory Provident Fund benefits already availed of by them. It should be noted that it shall not be sufficient for an ex-employee to exercise option within the specified time but also to ensure that it reaches the prescribed authority indicated below within the specified time and he obtains acknowledgment thereof.

3.(a) The option shall be communicated to:-

(i) if he was a non-gazetted Government servant or a gazetted Government servant whose pay and allowances were drawn by the Head of office., to the head of office concerned.
(ii) If he was himself Head of office/Head of Deptt. to the Head of Deptt. Administrative Deptt. concerned respectively.

(b) The option form when received shall be counter signed by the authority which receives it and shall be kept in a new file to be opened for the purpose of grant of pension/gratuity. Acknowledgment of the opt, form received may be issued from this file.

4. The entire period of service rendered by the ex-

employees referred to above, on their electing to be governed by pension rules shall qualify for the purpose of pension as already clarified vide Finance Deptt Memorandum No.F.1(52)FD(Gr.2)/76 dtd.22.11.76. The retirement benefits already paid to them shall be adjusted against retirement gratuity and pension admissible under the Rajasthan Service Rules. They would not be required to refund the retirement benefits received by them any interest on the amount of retirement benefits would be charged in respect of the intervening period.

By Order of the Governor,
Sd/-
(Shiv Nath Singh)
Dy.Secretary to the Government."

So also the memorandum dt. 10.3.1977 which reads as under:-

"GOVERNMENT OF RAJASTHAN

FINANCE (GR.2) DEPARTMENT

MEMO

No.F.1(26)FD(GR.2)/74 Dated Jaipur, the 10th March,1977

Sub : Counting of Work-charged service for Pension on absorption/appointment of work-charge Employees on regular post under the Government.

The Governor are pleased to order that after existing para 8, the following para may be added in the Finance Department order of even number dated 31.1.1977 namely;

"9. The work-charged employees who were absorbed on regular posts but died before exercising option for pension under these orders shall be deemed to have opted for pension under this order unless the members of family of such deceased specifically make a request that they may be paid contributory Provident Fund benefit due to deceased. The Head of Office should before preparation of pension papers invariably ascertain from the members of the family of the deceased entitled to receive the retirement benefits whether he/she would like to receive Contributory Provident Fund benefits or not.

By order of the Governor.

Sd/-
Financial Commissioner
&
Secy. to the Government."

Thus, a look at these memorandums show, that the memorandum dt. 31.1.1977 was issued by the State Government, in its Finance Department, for counting of work charged service for pension, on absorption /appointment of work charged employees, on regular post under Government, and thereby it was provided, that under the existing provisions, contained in the Rajasthan Service Rules, the service rendered by a Government servant, as work-charged employee, before his appointment to a regular post does not count as qualifying service for pension, and that, such a work charged employees are absorbed/appointed to regular posts under the Government in accordance with the orders issued by the Administrative Department of Government from time to time. The question regarding grant of pensionary benefits, and counting of service rendered by such Government servant as work charged employee prior to appointment to regular post, for the purpose of pension under Rajasthan Service Rules, has been under consideration of the Government, and therefore, the Government ordered, that the work charged employees, who are absorbed/appointed to regular post, by conversion of work charged post into regular post, under Government from time to time, may be

allowed to exercise option to elect, either to continue to contribute towards Contributory Provident Fund, or to opt for pensionary benefits under the R.S.R., and on their electing to opt for pension rules, the period of service rendered by them, as work charged employees, before appointment/absorption on regular post, shall qualify for pension, for the period during which they subscribed to the Contributory Provident Fund, irrespective to the date of absorption. Then, the procedure was prescribed to be followed, in case of opting for pension, and according to para-5, the option was to be exercised in writing, within a period of three months from the date of publication. Then, in para-6 it was stipulated, that the Government servants, who had retired between the date of absorption/appointment, and the issue of these orders, and received retirement benefits, shall also be entitled to exercise option for pension. Thus, this memorandum had the definite object, and applied to definite factual situation, and to definite category of persons. The object was to clear the confusion, about the computation of period of service rendered as work charged employees after being appointed/absorbed in regular posts of Government for the purpose of computing their qualifying service, so also for the purpose of pension, and then an option was decided to be made available to such employees, to opt for pension. Likewise with respect to such employees, as were covered by that memorandum, an option was also available, to those, who had retired

between the date of absorption/appointment, and the issue of order dt. 31.1.1977. Then, in continuation of this memorandum dt. 31.1.1977, the memorandum dt. 10.3.1977 was also issued, adding further para-9 to the memorandum, and providing for the right to exercise option, to be made available to the family members also, in the event of such employees having died before exercise of option for pension under this memorandum. Thus, these two memorandums are clear, and categoric, to be applicable to work charged employees only, who are absorbed or appointed on regular Government posts. It is not case of the petitioner, that the deceased was a work charged employee, having been absorbed or appointed on regular post in Government, rather he claims to be regular employee of the erstwhile Jodhpur State, and therefore, no benefit of these memorandums can be claimed by the petitioner.

Since the whole thrust of the writ petition is, on the basis of issuance of this notification dt. 31.1.1977, and the petitioner having exercised option, claim for pension has been laid, in view of the above conclusions about these memorandums, being not applicable to the petitioner's husband at all, without going into the question, as to whether the option was exercised by the deceased or not, the petitioner cannot be said to be entitled to any benefit, on the basis of these memorandums, or the alleged option, and the claim of the petitioner is

required to be negated on this sole ground.

However, though not necessary for me to consider, yet since submissions have been made, I feel it appropriate to consider some other aspects also.

Coming to the judgment of this Court, in Retired Contributory Provident Fund Holders Association's case, therein certain dates, being the cut off dates, stipulated in various orders, had been struck down as unconstitutional, and vide judgment dt. 3.9.1985, the State Government was directed to afford opportunity to the Government Servants, who were the members of the Retired Contributory Provident Fund Holders' Association, to exercise the option for pension, irrespective of the date of retirement, or the date on which the retired person was in service or not, and in case, such persons elect to opt for pension, the pension was directed to be computed, and paid. This judgment was upheld by the Division Bench, but then, the fact does remain, that option was required to be given by the State Government, and was not available automatically. I may, at this place. again refer to judgment of Hon'ble the Supreme Court, in Krishena Kumar's case, wherein in para-30 it was held, in very categoric terms, as under:-

"…… Thus, on the retirement of an employee

> Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retires must also equally be applicable to P.F. Retirees. This being the legal position the rights of each individual P.F. retiree finally crystallised on his retirement whereafter no continuing obligation remained while, on the other hand, as regards pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the P.F. retirees they would not be so adversely affected ipso facto."

Thus, in view of above constitutional bench judgment of Hon'ble the Supreme Court, there is no escape from the conclusion, that the rights of the retirees are to be determined, as on the date of retirement, on the basis of the fact, as to whether he was P.F. Contributor or was entitled to pension. Admittedly, in the present case the deceased was a C.P.F. contributory.

Then, it cannot be disputed, that even in respect of P.F. retirees, with respect to whom the employer does not continue any further obligation, it is open to the employer, to allow such retired employees, to switch over to pension, and in the event of said option being given, in accordance therewith, the option has to be exercised. In Retired Contributory Provident Fund Holders' case, this Court was only considering the validity of the cut off dates, and that was struck down, and direction was given to

the State Government to afford opportunity to exercise option for pension, irrespective of the date of retirement, or the date on which the retired person was in service or not. Significantly, it was not held, that all the petitioning members, who seek the benefit of pension scheme, should be given the pension benefit, by striking out the cut off date, and merely on the basis of their filing the writ petition, without having otherwise opted for pension. It is in this sequence, that appeal against this order was decided on 11.3.1987, by the Division Bench, thereafter the matter had been decided by Hon'ble the Supreme Court, against the State. Then, in compliance thereof, and thereafter, memorandum dt. 17.10.1987 was issued, clearly being in compliance of the judgment of this Court, referred to above, giving option to all ex employees of the State of Rajasthan, who retired after 1.4.1951, from the posts under the Government, availing themselves of retirement benefits, available under the Jodhpur Contributory Provident Fund Rules, and who had not opted for pension rules, on affording chances from time to time after 1.4.1951, to opt for pension rules, may be allowed an opportunity to exercise option for pension, in writing, within a period of three months from the date of publication of the memorandum. It was also stipulated, that the option once exercised should be final, and those, who do not exercise option, shall be deemed to have retained Contributory Provident Fund. It was also stipulated, that

it is not sufficient for ex-employee to exercise option within the specified time, but also to ensure, that it reaches the prescribed authority, indicated, within the specified time, and he obtains acknowledgement of the same, and then, the procedure, to be followed thereafter, has been provided. In that view of the matter, the option was required to be/was permissible to be, exercised within a period of three months from the date of publication of this memorandum (dt. 17/10/1987). However, in the present case, since the husband of the petitioner has already died, way back in the year 1979 itself, the option permitted under this memorandum dt. 17.10.1987, was not available to the family members of the deceased.

Since after issuance of this memorandum, again the controversy arose, in the manner, that various retirees had died before issuance of this memorandum dt. 17.10.1987, and therefore, there was another litigation, which was decided by the Division Bench of this Court, being “State of Rajasthan Vs. Retired Contributory Provident Fund Holders' Association” reported in 1989(1) RLW-347, wherein a direction was sought against the State, to provide for payment of pension to the widows of the C.P.F. Holders, on their opting the same, from the date, the contributors of Jodhpur Contributory Provident Fund have been given the pensionary benefits. In this case reference was made to the previous judgments, and issuance of Memorandum dt.

17.10.1987, and another memorandum issued on 10.3.1977, inviting options, and it was pointed out, that the person has died prior to issuance of Memorandum dt. 17.10.1987, and the reference was made to Government order, granting family pension to the widows of the work charged employees, absorbed on regular posts, who died without exercising option. It was contended, that if the husbands of these widows had been alive they would have opted for pension, and the widows of those, who were alive, and not getting pension, amounts to discriminatory action. The Division Bench of this Court, referring to the memorandum dt. 10.3.1977 quoted above, considering that the widows and other members of the family of the deceased work charged employees have been given the benefits of the family pension, held that there is no rational for denying such option to the widows of the ex-employees, who were ex-employees of the state, simply on the ground, that their husband died prior to issuance of memorandum, and therefore, the writ was allowed, and the State was directed to provide an opportunity, to the widows of the contributors of Jodhpur P.F., who died before the issuance of the memorandum, to opt for family pension, and to pay them family pension, on their exercising option for the same.

Significantly against this judgment, the matter was carried to Hon'ble the Supreme Court by the State of

Rajasthan, and that matter was decided by Hon'ble the Supreme Court being State of Rajasthan and Ors. Vs. Rajasthan Pensioners Samaj, reported in AIR 1991 SC-1743, wherein, in para-2 of the judgment, the contention of the State Government was noticed, to the effect, that the C.P.F. retirees form a different class, who had opted for pension scheme, according to the decision in Krishena Kumar's case, and as such, they are not entitled, now to claim, as of right, to switch over from Provident Fund Scheme to Pension Scheme, and consequently, the CPF Retirees are not entitled to the benefits, granted to the Pension Retirees. Yet another contention was noticed, to the effect, that the widows, of Jodhpur CPF Retirees, and Pension Retirees, do not form one homogeneous class, but form two different classes, and therefore, the widows of CPF Retirees are not entitled to opt for pension scheme, in view of the judgment of Krishena Kumar's case, and that, moreover the right to opt for pension scheme was the right of the employees, which right, cannot be either inherited or exercised, by the widows of the Retirees. Then, in para 4 it was held, that "we are of the firm view that there is much force in the submission made on behalf of the appellant and hold that the order impugned cannot be sustained in the light of the principle laid down in Krishna Kumar's case." With this finding, the judgment of Division Bench was set aside. Then, the proposal made by the Government was recorded, to the effect, that the State

Government has agreed to grant ex-gratia payment @ Rs. 150/- per month w.e.f. 1.11.1989, to the alive widows of the Jodhpur CPF Retirees, which CPF Retirees did not opt for pension scheme, as and when chances were given to them to switch over to the pension scheme, and died after availing CPF benefits. Thus, while setting aside the judgment of Division Bench, the State Government was directed to pay ex-gratia amount, in addition to the admissible D.A.

Thus, in view of this judgment, it cannot be said, that any benefit is available to the petitioner, other than the one, which has already been granted by the respondents, being, making of payment of ex-gratia amount.

So far as the judgment in Chhoti Devi’s case is concerned, it clearly appears from the judgment, that the employee in that case was a Beldar, who must have been a work charged employee, and had filed option prior to the date, while in the present case, the facts are entirely different, apart from the fact, that this judgment does not take into consideration, the earlier judgment of Hon'ble the Supreme Court, in Rajasthan Pensioner Samaj's case. Therefore, on the face of judgment of Hon'ble the Supreme Court, I can not prefer to follow the judgment of Chhoti Devi's case so as to decide contrary to the ratio of the judgment of Hon’ble Supreme Court in Rajasthan Pensioner

Samaj's case.

So far the judgment of this Court, in R.S.E.B. Retired Employees Association's case is concerned, that case also does not help the petitioner at all, inasmuch as the controversy in that case was, that the earlier litigation referred to related to the employees of the State Government, and since the petitioners in that case had been absorbed by R.S.E.B., they were not being given the benefit, of the memorandum dt. 17.10.1987, and adjudicating this controversy, it was held, that those persons, whose services were absorbed permanently by the Board, remained Govt. Employees, upto the date of their permanent absorption, and termination of lien on the post with Govt., and the date of termination of lien has to be treated as the date of retirement, and consequently, the members of the petitioner association have to be treated as part of that class of Govt. Servants, to which option under notification dt. 17.10.1987 was made available, and they ought to be treated alike, and accordingly, the petitioners were held entitled to the relief, on the anvil of Article 14. Significantly, in para-19 it was also held, that the members of Jodhpur State Contributory Provident Fund did not become entitle to pension ipso facto, as a result of decisions of this Court in 1986 RLW-42, as affirmed in 1987 (1) RLR-353, but their entitlement to pension depended on exercise of option under notification dt. 17.10.1987. Then,

it was further held that "obviously, these retired Govt. Servants who had died prior to 18.10.1987 could not exercise option made available on 17.10.87. In this view of the matter, in the absence of exercise of option by the Govt. Employees, they did not become a part of the class of employees who have exercised option for pension." While recording this finding, the judgment in Pensioner's Samaj's case was found to be distinguishable on facts, and was held to be not applicable to those, who were alive on 17.10.1987, and could exercise their option, in terms of notification dated 17.10.1987, if given to them. Thus, since the deceased had already died in 1979, even by virtue of this judgment, the petitioner cannot claim to be entitled to exercise option, under memorandum dt. 17.10.1987.

Thus, the net out come of the aforesaid discussion is, that the petitioner is not entitled to the pension/family pension, as claimed in the writ petition, and is only entitled to ex-gratia payment, as directed by Hon'ble the Supreme Court, in Rajasthan Pensioner Samaj's case, which is already being paid, and the respondents rightly submitted, that it will be continued to be paid. The writ petition is, therefore, dismissed.

(N P GUPTA),J.

/Sushil/